

***United States Court of Appeals
for the Second Circuit***

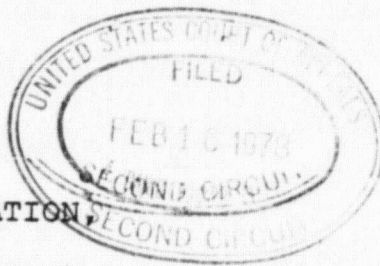


APPENDIX

775035

UNITED STATES COURT ()
FOR THE SECOND CIRCU

In the Matter o_
ADELPHI HOSPITAL CORPORATION
Bankrupt.



-----X

APPENDIX

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Docket Entries

- 8/12/75 Rec'd. Trustee's first report balance \$314,359.79
- 9/8/75 Signed Order to Show Cause against NYC Health & Hospital Corporation re Records returnable Oct 1, 1975 at 10:30am
- 11 Rec'd. Complaint & Summons & Notice of Trial - Lawrence Sarf Trustee v. Leon J. Davis as Pres. of Local 1199 Drug & Hospital Union AFL-CIO
- 11 Rec'd. Complaint & Summons & Notice of Trial - Lawrence Sarf Trustee v. Joseph A. Christie & Cortelyou Medical Arts Building, Inc.
- 15 Signed Order waiving filing fee for Complaint re Trustee v. Leon J. Davis, etc.
- 15 Signed Order waiving filing fee for Complaint re Trustee v. Joseph A. Christie, etc.
- 16 - Issued Summons & Notice of Trial re Adversary Proceeding Trustee v. Leon J. Davis as Pres. of Local 1199 Drug & Hospital Union AFL-CIO - Answer to be filed on or before Oct. 11, 1975 - Pre-trial for Oct. 22, 10:00 a.m.
- 16 Issued Summons & Notice of Trial re Adversary Proceeding Trustee v. Joseph A. Christie & Cortelyou Medical Arts Building, Inc. - Answer to be filed on or before October 11, 1975 - Pre-trial for Oct. 22, 10:00 am
- 19 Summons & Complaint re Trustee v Joseph A. Christi et ano withdrawn - See letter of 9/17/75
- 19 Signed Order authorizing Trustee to commence plenary action in the U.S. District Court, E.D.N.Y. atainst Joseph A. Christie and Cortelyou Medial Arts Building, Inc.
- 24 Received Affidavit of Service of summons, notice of trial and complaint -re- trustee vs Leon Davis, pres Local 1199
- 10/1/75 Order to Show Cause against NYC Health & Hospital re records - Withdrawn - w/o prejudice
- 7 Signed Order to show cause ret. Oct. 22, 10:30 a.m. re N.Y.State Dept. of Health
- 10/10 Received Affidavit of Union -re-Adv Pro, T. vs Leon Davis

Docket Entries

DATE	
10/10/75	Signed Order authorizing Trustee to accept \$22,500. from START REALTY CO. in full & complete settlement of all claims & controversies said Trustee has or may have as against START REALTY CO. relating to costs & expenses of sale of hospital bldg. & personal contents therein, etc.
10/22	Adversary Proceeding-(T. vs Leon J. Davis, pres of Local 1199)- marked Off Calendar awaiting Stipulation of Settlement-if no stip.-restore on request to court by letter with copy to Def's atty.
"	Adversary Proceeding-(Trustee vs Dr. Christie)withdrawn see letter of September 19, 1975
"	Order to Show Cause -re- Records Adjourned to Nov 10, 10:30 am
11/10/75	Order to Show Cause -re- Records; Submitted with memorandum of Facts of Law with an affidavits- All papers to be filed on or before Dec 1, 1975
24	Signed Order authorizing Trustee to transfer sum of \$22,500 from estate acct. to a 90 day time certificate of deposit at prevailing rate of int. at Bankers Trust Co., etc.
12/1/75	xxxxxxx Received Trustee's memorandum of Law in support of application to Abandon Medical Records
5	So Ordered Stipulation between Lawrence Sarf, Trustee, Plaintiff & Leon J. Davis as president of Local 1199 Drugs & Hospital Union, AFL-CIO
<u>1976</u>	
1/14/76	Motion pursuant to Sec 67 of the Act; N/A in opposition; motion granted, SO
1/15/76	Signed order preserving lien for the benefit of the estate -re- lien formerly asserted by Local 1199
15	Signed order authorizing retention of special counsel (Hayt, Hayt, Tolmache & Landau)
3/ 22	Signed Decision and Order on Trustee's application for an Order directing the New York State Dept. of Health to remove and store all of Bankrupt's medical records, etc. and mailed copies to Schneider & Arzt, Jules Teitelbaum, Louis Lefkowitz, Atty. Gen. by Robert S. HARRIS, J.C.
	Adelphi Community Services, Dr. English

Docket Entries

DATE	PROCEEDINGS
3/31/76	Signed order that Trustee's motion granted -ie if State Department of Health not take possession of Records within 15 days after service of this order - trustee by application (ex parte) will abandon
5/14	Signed Order authorizing Trustee to abandon medical and patient records of this estate, etc.
5/24	Rec'd. Notice of Appeal of Order dated May 14, 1976 from N.Y. State Dept. of Health
25	Mailed Copy of Notice of Appeal to Finkel, Nadler & Goldstein, Esqs.
6/ 7	Rec'd. Designation of Record & Issues on Appeal from Appellant, New York State Dept. of Health
8/6	Record on Appeal filed; Notices sent to all interested parties.
8/17/76	Signed order allowing Hayt, Hayt, Tolmach & Landau be given access to medizak medical records and to remove any part of same
17	Signed Order to show cause returnable Aug 23; 10:30; re medical records
23	Received Affidavit of service of OSC on Attorney General, Adelphi Medical Arts Associates
23	Order to show cause- why an order should not be entered herein directing the proper disposition of the medical records; Granted as indicated-Settle on order
9/ 2	Signed Order directing Trustee to remove all medical records no later than 6 P.M., September 23, 1976, etc.
1977 1/24	So Ordered Stipulation between Bankrupt & Paul Weinstein of Counsel to the Sheriff of the City of N.Y. (Claim # 102 filed by City of N.Y. reduced to sum of \$2000. and in such reduced amt. the Trustee shall recognize the Sheriff's lien against the assets of the Bkrpt. estate and be entitled to priority payment)
2/23/77	Motion for an order authorizing and directing the Trustee to make an interim distribution to all wage wage earner priority creditors; Motion granted; SO in which is to contain the schedules of payments, taxes, etc.

Docket Entries

PROCEEDINGS

DATE

10/26, con't-

#131, N/A, reclassified as a general unsec cl, granted; SO;
 139, N/A, expunged, granted, SO;
 146, N/A, expunged, filed late, granted, SO
 147, expunged, late claim, granted; SO;
 149, expunged, late claim, granted; SO;
 150, expunged, late claim; granted, SO ;
 151, expunged, late claim, granted, SO;
 152, expunged, late claim, granted, SO.

10/27/77 Received from clerk's office; Memorandum and order of
 Judge Pratt affirming order of Judge Costa's 3/31/76

11/1/77 Signed order expunging or reclassifying claims heard on
 10/26/77

11/21/77 Received copy of Notice of appeal of NYS Department of
 Health appealing an order of Judge Pratt dated Oct. 19/77
 authorizing the trustee in bankruptcy to abandon hospital
 records.

Docket Entries

- 6/5/76 Notice of Appeal to District Court from order of Bankruptcy Judge Joseph V. Costa dated May 14, 1976 filed. ASSIGNED TO: *Pratt, J.* (4)
- 11/11/76 Order dated Nov. 9, 1976
By Pratt, J. -/Petition for review of Bankruptcy Order has been scheduled for hearing before Hon. George C. Pratt, on Dec, 10, 1976, at 9:00 A.M. in Courtroom No. 6, U.S. Courthouse, etc. Appellant's brief to be served by Nov. 26, 1976; appellee's brief by Dec. 3, 1976; and appellant's reply brief, if any, is to be served and filed by Dec. 8, 1976. (copies mailed to Finkel, Nadler & Goldstein, Attys (5) and Louis Lefkowitz, Esq.)
- 12/15/76 Memorandum of Law for N.Y.S. Department of Health filed. (Atty. Gen. of State of N.Y., Robert Hammer, Asst. Att. Gen., of counsel) (6)
- 12/17/76 Before PRATT, J. Hearing on petition for review, CASE ARGUED, DECISION RESERVED.
- 1/25/77 Supplementary Memorandum of Law for New York State Department of Health filed by Attorney General Lefkowitz, Appellant. (Filed in Westbury) (7)
- 10/20/77 (From FY-Trustee's Brief on Appeal to the U.S.D.C. filed. Supplemental Memorandum of Law filed. (Finkel, Nadler & Goldstein, Esqs.) (8)
dated Oct. 19, 1977- (9)
- 10/20/77 By Pratt, J. - Memorandum & Order filed. The state will have to consider whether it will take appropriate enforcement action to implement the policy for record preservation embodied in 10 NYCRR Sec. 720.20. Having determined its public policy the state must now find the means to enforce that policy; it may not do so through this bankruptcy proceeding. The order of the bankruptcy court entered May 14, 1977 is AFFIRMED. SO ORDERED. (10)
(cps. mailed to FINKEL, NADLER & GOLDSTEIN, ESQS.
LOUIS J. LEFKOWITZ, ATTY. GEN. of NYS
Att: Robert S. Hammer.) (77 C 242)
(Papers #8, 9 sent to COSTA, B.J. Together with file of Costa, B.J.)
(copy of (#10) sent to COSTA, B.J.) Hc
(cps. sent to each B.J.) HC
- 11/18/77 Notice of Appeal filed. (Order of Judge Pratt dated Oct. 19, 1977) (Copy mailed to Clerk, U.S. Circuit Court of Appeals and also to Bank. J. Costa) SH (11)

Order to Show Cause

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of:

ADELPHI HOSPITAL CORPORATION,

Bankrupt.

NO. 74 B 617

ORDER TO SHOW CAUSE

Upon the annexed petition of LAWRENCE SARF, dated October 4, 1975 and good cause having been shown and no adverse interest being represented, it is

ORDERED, that the New York State Department of Health show cause before this Court at the courthouse located at 225 Cadman Plaza East, Brooklyn, New York before the HONORABLE JOSEPH V. COSTA, Bankruptcy Judge on the 22 day of October, 1975 at 10:30 A.M. of that day or as soon thereafter as counsel can be heard why an Order and Judgment should not be made and entered herein directing the New York State Department of Health to remove and store all of the bankrupt's medical and patient record now located at its former premises and declaring that Section 720.20 (q) of Chapter V of the State Hospital Code of the State of New York is of no force and effect as against the trustee herein, or in the alternative authorizing the trustee herein to abandon said medical and patient records as burdensome to this estate and for such other and further relief as to this Court may seem just and proper; and it is further

Order to Show Cause

ORDERED, that service of a copy of this Order together with the papers upon which it is based upon the New York State Department of Health located at 2 World Trade Center, New York, N.Y. 10047 by certified mail, return receipt requested, on or before October 10, 1975 shall be deemed sufficient.

Dated: Brooklyn, N.Y.,

October 7, 1975.

Joseph V. Coste
BANKRUPTCY JUDGE

Application

TO THE HONORABLE JOSEPH V. COSTA,
BANKRUPTCY JUDGE:

LAWRENCE SARF by his attorneys SCHNEIDER & ARZT and JULES
TEITELBAUM, respectfully shows the Court as follows:

1. That he is the trustee herein duly qualified and acting as such.
2. That among the property of the bankrupt estate there consists voluminous records of the multitude of patients who were treated at the hospital during its long years of existence. These records are still located at the premises formerly owned and occupied by the bankrupt.
3. The trustee through his counsel has tried to make arrangements with the new occupants of the hospital premises with the hope that they would continue to store said records and provide a continuity for the patients who formerly were treated by the bankrupt. These efforts have been unsuccessful. The new occupants of the premises have informed the trustee that they will in no way be responsible for the hospital records and have urged him to make immediate arrangements for their removal.
4. In addition thereto, the trustee has been burdened with subpoenas duces tecum served by various attorneys involved with negligent tort suits as well as inquiries by physicians and other hospitals for the patient records. The trustee simply does not have the wherewithal to comply with the demands made upon him although realizing that they are both legitimate and proper. Furthermore, the retention of these records by the bankrupt estate are completely and wholly unnecessary for its administration.

Application

5. The expense involved in storing the records, upon information and belief, would become burdensome to this estate.

6. That Chapter V of the State Hospital Code Section 720.20 (q) provides as follows:

"In the event that a hospital discontinues operation for any reason whatsoever, the governing authority shall maintain, store and service in the city in which the hospital is located all medical records for a period of not less than six years. The governing authority shall notify the department in writing where the medical records will be stored and serviced."

7. That the New York State Department of Health has taken the position that the trustee in bankruptcy herein is obligated to comply with the aforementioned regulation as set forth above.

8. That upon information and belief, the trustee in bankruptcy herein cannot be compelled to maintain, store and service the medical and patient records of the bankrupt as mandated by the aforementioned regulation. That said regulation has no force and effect as against the trustee herein and is in conflict with the Bankruptcy Act and the Rules of Bankruptcy Procedure.

9. That upon information and belief, the New York State Department of Health must bear the responsibility of preserving and storing all medical and patient records of the bankrupt herein. That in addition thereto, the trustee is of the opinion and belief that the New York State Department of Health must be directed to remove and store the medical and patient records in question and thus relieve this estate from the burden. The New York State Department of Health has both the personnel and facilities to store the records and furnish the services that may be required with respect thereto.

10a
Application

WHEREFORE, the trustee respectfully requests that the annexed Order be signed directing the New York State Department of Health to Show Cause why an Order should not be made and entered herein directing it to remove and store the medical and patient records of the bankrupt herein and declaring Chapter V of the State Hospital Code Section 720.20 (q) to be of no force and effect as against the trustee or in the alternative permitting the trustee to abandon said records as being burdensome to this estate, all for which no previous application has been made, except that a prior application directed against the New York City Health & Hospitals Corporation was withdrawn.

Dated: New York, N.Y.,

October 6, 1975.

SCHNEIDER & ARZT and
JULES TEITELBAUM
Attorneys for Trustee

By: _____

Member of the Firm
401 Broadway
New York, N.Y. 10013
212 226-2143

11a

Hearings

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter

-of-

ADOLPHI HOSPITAL CORP.

Bankrupt

72-117

United States Courthouse
Brooklyn, New York

October 22, 1975
10:30 A. M.

Refore:

HONORABLE JOSEPH V. COSTA

Bankruptcy Judge

RONALD L. FOLLEN

Court Reporter

Hearings

appearances :

SCHNEIDER & ARZT, ESQS.
Attorneys for Trustee
401 Broadway
New York, N. Y., 10013

BY: HAROLD BERZOW, ESQ.
Of Counsel

ROBERT S. HAMMER, ESQ.
Asst. Attorney General

o0o0o

THE COURT: Adelphi Hospital Corp, on an
order to show cause, the State Department Hospitals.

Good morning, gentlemen. Your name, sir?

MR. HAMMER: My name is Robert S. Hammer,
Assistant Attorney General for Louis J. Lefkowitz,
Attorney General, and we're here for the State
Department of Health.

If the Court please, we would like to put
this matter over for a week or two. Your Honor
may be aware that the same issue is now pending
before Judge Price in Linden General.

THE COURT: Yes.

MR. HAMMER: The matter was heard a week ago,
and in light of the discussion with Judge Price, I

Hearings

1
2 reported back to the Health Department to see if
3 something could be done with --

4 THE COURT: Well, Mr. Hammer, you understand
5 that this is a very important situation right now,
6 especially since in my case the property was sold
7 to several doctors who are operating the hospital
8 not as a hospital but as a clinic and whatever else
9 there is for Senior Citizens. And they're getting
0 constant requests from doctors.

1 Now, as I read the statute, and I want it
2 so that you can carry it back to the Attorney Gener-
3 al and the department with which you discuss it --
4 as I read the statute, the governing body, as I
5 interpret it in the statute, is not the trustee but
6 the governing body of the government, either the
7 City or the State, because here the public interest
8 is involved. I mean strictly that's the way I
9 read it.

1 And, certainly, I should think that the
2 State or the City or the department that's interest-
3 ed would have sufficient interest where they could
4 have a central place -- because this French Hospi-
5 tal in New York, you're going to have the same dif-
6 ficulty. I don't know if you've had the application

Hearings

1
2 yet. Judge Price has 2 or 3 hospitals. I have
3 this and another one pending from what I under
4 stand. Now, that's going to become a matter on
5 which the Attorney General should direct or give
6 some legal opinion to the different departments
7 as to who should take jurisdiction and where the
8 public can be directed and the doctors can be
9 directed for these records which, under the law,
10 a hospital is required to keep.

MR. HAMMER: Yes. We're fully conversant
with the problem, your Honor.

THE COURT: Yes, I know.

MR. HAMMER: The Health Department --

THE COURT: They washed their hands --

MR. HAMMER: They say the governing body is --

THE COURT: -- is the State Department --

MR. HAMMER: No, it would be the board or
trustees or the proprietors of the hospital. This
is how they define the governing body under the
State Hospital.

THE COURT: May I say this? Were it to be
for an order directing a governing body to do a
certain thing, to comply, to fix, to comply with
either a regulation as to the physical condition

Hearings

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2 or to the records or something like that, I would
3 agree with the City.

4 Now, I want you to know that the representa-
5 tive of the City was here on an occasion to discuss
6 the matter with me and they said that -- the reason
7 why you're brought in now is that they said that in
8 its opinion, the City's opinion, the State Depart-
9 ment is responsible for it.

10 This is a matter where, in my opinion, this
11 particular provision of the law is a public policy
12 law, a public welfare law. The trustee could very
13 easily, as it does in every case, and which it has
14 the right to do, it can come in and ask for an--
15 order of abandonment. And I would have to grant
16 it because they are no longer of use to the ^{State} State.
17 But he says, "I want to help to comply with the law
18 insofar as the records are concerned. We've kept
19 them intact, and we want to keep them intact."

20 Now, there's got to be somewhere, some central
1 place -- How can you enforce it against the trustee?
2 I mean -- Just discussing it, how can you enforce it?
3 The trustees in my case resigned sometime ago, im-
mediately after the filing of the Chapter. They
resigned. I, then, for the purpose of carrying on

Hearings

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2 under Chapter X1, at the request of the people
3 operating the hospital, appointed new trustees.
4 One, in my recollection, was an architect who was
5 going to get some funds from somebody for the pur-
6 pose of complying with plans. Another one -- I
7 don't think they were even doctors. They were
8 people who weren't really interested in the carry=
9 ing on of the hospitals except insofar as they
10 might be able to pull it out of this Chapter X1.

11 Now, how are you going to impose on that
12 type of a person the responsibility of keeping these
13 these records and answering subpoenas to go to
14 court --

15 MR. HAMMER: Exactly.

16 THE COURT: -- or getting doctors who have
17 a right under this very statute. The purpose of
18 the statute is set forth, for the purpose of doc-
19 tors getting past records for history purposes

20 MR. BERZOW: And the expense, your Honor,
21 is not --

22 THE COURT: Aside from the expense. I am
23 thinking of the underlying reason for the law.

24 MR. BERZOW: Yes.

25 THE COURT: And that is that the welfare of

Hearings

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1
2 the people, the patients in the hospital, is para-
3 mount in the eyes of the legislature at the time
4 this law was enacted as to where these records will
5 be kept, who can the patient look to. And I'm giv-
6 ing you how I would write on this thing without any
7 further research.

8 MR. HAMMER: I understand, your Honor.

9 THE COURT: You can, of course, give me all
10 the legal research you want, and I will be bound by
1 it if I think it's applicable here.

2 Now, how much time do you think you'll need?

3 MR. HAMMER: Well, we're due back before
4 Judge Price next week, the 30th, in the afternoon.

5 THE COURT: Suppose I give you a week after
6 that? Because you will have some ideas, right?

7 MR. HAMMER: Yes.

8 THE COURT: Then if you have come to some
9 agreement and a stipulation can be entered into,
10 I will do whatever I think is proper in the circum-
1 stances.

2 MR. BERZOW: I just hope that the matter
3 doesn't get delayed because the problem is becoming
4 acute.

5 THE COURT: It is. I get letters here. I

Hearings

1
2 get telephone calls.

3 MR. BERZOW: I'm getting at least 5 calls
4 a day, your Honor, from patients, from doctors.

5 THE COURT: Well, I don't get that many.

6 MR. BERZOW: I'm the one they're directing
7 most of the calls to.

8 THE COURT: But the most important one I got
9 was a call from the people who bought the place who
0 said that they've accommodated the Court and the
1 trustee by keeping these records so long and they
2 are being bothered in the operation of their faci-
3 lity by these things.

MR. BERZOW: No question about it.

MR. HAMMER: Fine. That will be at 10:30,
your Honor, on the 10th of November?

THE COURT: Well, let me tell you. I'll give
you November 10th, that's a Monday morning, because
the 5th is a very, very heavy calendar. And you may
have it disposed of before then, in which event, you
can submit a stipulation. 10:30 on November 10th.

Thank you, gentlemen.

MR. HAMMER: Thank you, your Honor.

MR. BERZOW: Thank you, your Honor.

Hearings

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

In the Matter :

-of- :

ADELPHI HOSPITAL CORPORATION : 74-B-617

Bankrupt :

-----X

United States Courthouse
Brooklyn, New York

November 10, 1975
10:30 A. M.

B e f o r e :

HONORABLE JOSEPH V. COSTA

Bankruptcy Judge

RONALD E. TOLKIN

Official Court Reporter

Hearings

A p p e a r a n c e s :

SCHNEIDER & ARZT, ESQS.
Attorneys for Trustee
401 Broadway
New York, N. Y.

BY: JEFFREY FELDMAN, ESQ.
Of Counsel

LOUIS LEFKOWITZ, ESQ.
Attorney General

BY: ROBERT S. HAMMER, ESQ.
Asst. Attorney General

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THE COURT: Adelphi Hospital Corporation.

Have you gentlemen been able to resolve
your situation since you were last here?

MR. HAMMER: For the New York State Department of Health, Louis J. Lefkowitz, Attorney General by Robert F. Hammer, Assistant Attorney General.

If your Honor please, as I indicated over the phone last week to counsel's office, the Department of Health is going to look to the so-called governing bodies of these proprietary hospitals in situations of this kind as to what we are going to do, as in Linden General before your colleague, Judge Price. And this is what we will do in this

Hearings

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2 case.

3 THE COURT: Well, what are you going to
4 do in this case? You've said somebody is going
5 to look to somebody. Who is going to take the
6 records?

7 MR. HAMMER: We will direct -- when I say
8 "we," the Department of Health will direct the
9 proprietors to assume responsibility for the --

10 THE COURT: How can you -- there are no
11 proprietors.

12 MR. HAMMER: Your Honor --

13 THE COURT: There is no proprietor. The
14 proprietor is bankrupt. He is out of business.
15 How can you look to the proprietor?

16 MR. HAMMER: We will have to look to him
17 anyway. This is what the State Hospital Code says,
18 whether he is bankrupt or not. It's in the nature--
19 If anything, your Honor, it's in the nature of a
20 nondischargeable debt.

21 THE COURT: Well, you'd better submit a memo-
22 randum because I am going to hold -- I am going to
23 hear argument on this thing and I am going to --

1 How did Judge Price finally decide?

25 MR. HAMMER: He indicated that he would issue

Hearings

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2 an order authorizing abandonment of the records.
3 And the understanding is that at the same time,
4 since the City is going to regain title to the
5 property, since it took them on on tax liens, it
6 took the buildings on --

7 THE COURT: Took what buildings on tax
8 liens?

9 MR. HAMMER: The basis of --

0 THE COURT: Mr. Hammer, you have your facts
1 somewhere in oblivion.

2 MR. HAMMER: Let me --

3 THE COURT: The buildings here are now owned
4 by 2 doctors who have already set and reopened the
5 place.

6 MR. HAMMER: You're talking about --

7 THE COURT: Adelphi.

8 MR. HAMMER: I'm talking about Linden. You
9 asked me about Judge --

0 THE COURT: Now I'm talking about here. I
1 just wanted to know how he was going to dispose of
2 it.

3 MR. HAMMER: I see.

4 THE COURT: Now, as far as I'm concerned, I
5 would like to know the Attorney's General's position

Hearings

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2 as to the protection of the people of the State of
3 New York under a statute in conjunction with medi-
4 cal records which are necessary to the patients and
5 the doctors.

6 MR. HAMMER: Very well, your Honor. Our
7 position is, under the State Health Code, whether
8 this individual is bankrupt or not, he has the
9 personal obligation to assume custody and control
0 of these records and to make them available to
1 the patients.

2 THE COURT: Mr. Hammer, what do you do if
3 I proceed strictly according to the Bankruptcy Law
4 and authorize the trustee to abandonment? All
5 right? Assuming that I do that and the people now
6 running Adelphi Hospital throw them out in the
7 streets, what then? They are not the persons to
8 be responsible? In other words, it's not Adelphi
9 Hospital; it's now Adelphi Community Services, run
0 by 2 doctors who paid \$450,000 for the building and
1 some \$5,000 or more for the equipment and drugs.

2 They have no connection whatsoever with the
3 old Adelphi people. How are you going to tell the
4 old Adelphi people to do it? In the meantime, some-
5 body is dying on an operating table because you

Hearings

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2 can't get his records.

3 MR. HAMMER: Your Honor, I don't have the
4 authority and, as far as I know, I don't have the
5 immediate facilities for the Health Department to
6 go and collect those records. I can tell you what
7 we propose to do, and that is to require the bank-
8 rupt, whether he's a bankrupt or not -- to require
9 the proprietor, whether he's bankrupt or not to
10 assume this responsibility.

11 THE COURT: Let me ask you something.

12 MR. HAMMER: If we have to --

13 THE COURT: I want to ask you a question,
14 Mr. Hammer. I don't want to put you on the spot.
15 I know that you have certain limited authority
16 so far as the Attorney General's office is con-
17 cerned. But you are an attorney standing before
18 a Court, trained to think on your 2 feet. All
19 right?

20 Assuming that the proprietor is dead; he
21 is a dead person. All right? Assuming the hospi-
22 tal was a proprietary hospital owned by one person
23 and that person dies. How do you interpret this
24 law?

25 MR. HAMMER: I would interpret it that this

Hearings

7

obligation would devolve upon his estate.

THE COURT: And suppose there is no estate?

MR. HAMMER: There is no estate? Then --

THE COURT: This is the welfare of the people of the City of New York, of the State of New York.

MR. HAMMER: If there is no estate? Then the Commissioner of Health will have to be so advised and I will --

THE COURT: Well, I'm so advising you; there is no estate. There is nobody who can take these things. That's what I am trying to tell you. There is no board of trustees. There is no Adelphi Hospital. There is a bankrupt Adelphi Hospital. A trustee does not have the power that you would like him to have because the first thing that -- the first administrative action of the trustee is to follow and say, "Get out of this place as quickly as you possibly can." And he can't cause this estate to be carried on for a period of 8 or 10 years to keep these records.

Now, I would judge that the Attorney General's office by this time would have made some type of arrangement with some department of the City of

Hearings

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New York where warehousing could be set up and they could be kept there.

MR. HAMMER: Your Honor, I think -- I'm not sure that you understand our position completely.

THE COURT: I understand your position, Mr. Hammer, in that you're trying to wash your hands of the situation which I don't believe you have a right to do.

MR. HAMMER: No, we're not, your Honor. I'm sorry, but I'm afraid you do misunderstand.

Our position is that this individual, whether he be the former proprietor, whether he be bankrupt --

THE COURT: There is no individual. He's dead. He's nonexistent and he has no estate. Now, the people of the State of New York --

MR. HAMMER: Are you speaking in hypothetical terms, your Honor?

THE COURT: No, I'm speaking factually. There is no Adelphi Hospital. The trustee of Adelphi Hospital, and I hold that the trustee of Adelphi Hospital or the trustee of any bankrupt estate does not have the obligation of keeping records for

Hearings

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10 years.

MR. HAMMER: I'm not talking about the trustee. I'm talking about the individual who formerly operated this hospital. He is the one, as far as the Health Department is concerned, who has the obligation to assume custody of these records and to service them, whether he's bankrupt or not.

THE COURT: How are you going to enforce that obligation?

MR. HAMMER: If necessary, we can go into court and seek a mandatory injunction against him.

THE COURT: Well, you're in court now and I find that there is nobody in existence whom I can order to do that.

Let me say this to you, Mr. Hammer. The history of proprietary hospitals is that you have different trustees from time to time in which most of the people are philanthropic in nature and serve as a matter of courtesy to the hospitals. They get no money for doing it most of the time. You're going to tell me that those people have the obligation of keeping these records?

MR. HAMMER: That's what the State Hospital

Hearings

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Code says.

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Now, your Honor, are you confusing proprietary with voluntary hospitals?

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THE COURT: I'm talking about the -- No, no. I'm talking about the proprietary hospital.

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MR. HAMMER: A proprietary hospital is usually run for profit.

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THE COURT: But the trustees are not generally --

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MR. HAMMER: Your Honor, these aren't trustees as a rule. These are generally -- and I am not personally familiar with this particular hospital. But from my own knowledge and experience, proprietary hospitals are either run by or are owned either by an individual or a partnership, frequently physicians.

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THE COURT: This is very interesting, because I'd like to tell you, Mr. Hammer, for your information that the person who owned Adelphi Hospital is presently in a mental institution. You want to give Mrs. Marcus the obligation of taking care of the records? And she wouldn't know you if you talked to her. What do you do in a case like that?

25

I'm trying to find out how do I protect my-

Hearings

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2 self if I were in that hospital and I am now
3 lying in another hospital and my doctor wants the
4 x-rays and records that are necessary? You tell
5 me how I can do it. Be practical about it. How
6 do I do it?

7 I have no trustee. I have Mrs. Marcus who
8 is in a mental institution, who owned the hospital
9 before and lost half of the money that she put into
10 it, half if not all of it. Now, you tell me whe-
11 ther this statute is meant to take care of a situa-
12 tion like this.

13 The wording of the statute -- Let me see.
14 I have a copy of it here. I'm not trying to confuse
15 you. I want some guidance from the Attorney Gener-
16 al if I can get it.

17 MR. HAMMER: Your Honor, the guidance would
18 have to come not from the Attorney General but from
19 the Health Department. And frankly --

20 THE COURT: But you represent the Health
21 Department, don't you?

22 MR. HAMMER: Yes. And the advice, with res-
23 spect to the former proprietor, frankly, comes as a
24 complete news to me. I was --

25 THE COURT: Mrs. Marcus? She's been in a

Hearings

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2 mental institution for quite a while.

3 MR. HAMMER: All we have, and I say "we" --

4 THE COURT: Let me say this: She was be-
5 ridden when this thing first came in. I later
6 learned that she was not coherent, couldn't talk.
7 And I may be using the term "mental institution"
8 incorrectly. But she is in an institution because
9 of her health, her mental condition and otherwise.

10 MR. HAMMER: Frankly, your Honor, this comes
11 as complete news to me. All I have in my file in-
12 sofar as this proceeding is concerned is the trus-
13 tee's application with respect to the records.
14 There is nothing --

15 THE COURT: Let me ask you something. This
16 is the language of the statute, "In the event that
17 a hospital discontinues operation for any reason
18 whatsoever, the governing authority shall maintain,
19 store and service in the city in which the hospital
20 is located all medical records for a period of not
21 less than 6 years. The governing authority shall
22 notify the Department in writing where the medical
23 records will be stored."

24 Now, from the historical background or the
25 legislative minutes, were you able to ascertain what

Hearings

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1
2 and who they meant by the "governing authority?"

3 MR. HAMMER: The governing authority is
4 defined in the Public Health Law, itself.

5 THE COURT: What does it say?

6 MR. HAMMER: I don't have the exact text
7 of the statute, but I can tell you from my own --

8 THE COURT: I'd like to have it for this
9 reason. Assuming, Mr. Hammer, that I make a find-
10 ing, from the record, that there is no governing
11 authority in existence, assuming that I do, and I
12 then make an additional finding that this statute
13 was enacted to benefit the patients and the public
14 to make available for their doctors and the patients
15 the records for a period of 6 years. Who in the
16 City of New York or which administration in the City
17 of New York would be expected to keep these records?
18 Is there an institution? The Department of Health?

19 MR. HAMMER: I would have to say that the ✓
20 statute simply does not apply to the situation or
21 can. But the governing authority as defined in the
22 statute speaks of the board of trustees or the pro-
23 prietors or the administrators.

24 THE COURT: Well, what I would want you to do,
25 both of you, is brief the matter for me. I'm going

Hearings

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2 to write an opinion on it. I cannot, in good
3 conscience, leave this matter hanging to the point
4 where the people who purchased Adelphi Hospital and
5 who have been doing the Court a favor by holding
6 them there - there are about 23 files, I understand,
7 25 files - but they get a lot of calls, I get calls,
8 they get subpoenas --

9 MR. HAMMER: We have not --

10 MR. FELDMAN: We have gotten subpoenas in
11 negligence actions.

12 THE COURT: Subpoenas for court records in
13 negligence actions.

14 Now, something has to be done where the
15 trustee, the people from Adelphi Hospital say,
16 "No, we don't have them; they're with the Department
17 of Health."

18 I'm going to mark the matter submitted. I
19 cannot let this matter hang in the air, you see.
20 Submitted. I want memorandum which is to set forth
21 the facts and law, with any affidavit.

22 Now, you tell me how much time you want.
23 And not too long, because I want to get this matter
24 resolved.

25 MR. HAMMER: If your Honor please, I'd like

Hearings

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1
2 to December 1st.

3 THE COURT: All right. Exchange memoranda
4 and briefs. All papers to be filed on or before
5 December 1st, '75.

6 Now, Mr. Hammer, I would like you to do me
7 a favor. I know that the Attorney General is as
8 anxious in this case as I am to present the matter
9 to somebody in the Attorney General's office who
10 has some authority to contact some department,
1 whether it be the Department of Health of the City
2 of New York, whether it be a warehouse, a storage
3 agency that the City of New York has, to find out
4 if there is some agency where you can adopt a pro-
5 cedure in cases where there is no authority that
6 you can either arrest, order, hold in contempt or
7 otherwise.

8 MR. HAMMER: This is under --

9 THE COURT: Public Health --

10 MR. HAMMER: That's been under discussion be-
tween myself and the Health Department.

THE COURT: I would appreciate it if you
would, because they must recognize that if I could
have ordered somebody who I could hold in contempt
if he didn't follow my order, I would have done it

Hearings

16

2 3 months ago. But there is no one with whom I
3 could do so.

4 MR. HAMMER: Your Honor, had I known that --

5 THE COURT: About Mrs. Marcus?

6 MR. HAMMER: -- that this individual, from
7 what you told me, was either physically or mentally
8 incompetent --

9 THE COURT: She's been bed-ridden for sever-
10 al years. That was one of the --

11 MR. HAMMER: That would have put an entirely
12 different posture on the situation. Quite frankly,
13 this is the first time I've heard of it.

14 THE COURT: Well, I can tell you, and you
15 can tell them that this is a statement from the
16 Court, that Mrs. Marcus who is the owner of Adelphi
17 Hospital, later became the mortgagee when she be-
18 came ill, when her husband, Dr. Marcus died, is pre-
19 sently in an institution because of her physical
20 and mental condition.

21 Now, if by December 1st you can ascertain
22 some place where you can do it by agreement, I
23 would just as ^{LEAVE} ~~lie~~ do it that way, so that, at
24 least, we protect the people. Thank you, gentlemen.

25 MR. HAMMER: Fine. Thank you, your Honor.

MR. DELANEY: Thank you, your Honor.

Memorandum and Order of Costa, B.J.

RECEIVED AND FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAR 22 1976

JOSEPH V. COSTA
BANKRUPTCY JUDGE

-----x

In the Matter :

of :

ADELPHI HOSPITAL CORPORATION, :

74 B 617

Bankrupt :

-----x

DECISION AND ORDER
ON TRUSTEE'S APPLICATION
FOR AN ORDER DIRECTING THE
NEW YORK STATE DEPARTMENT OF HEALTH
TO REMOVE AND STORE
ALL OF BANKRUPT'S MEDICAL RECORDS, ETC.

SCHNEIDER & ARZT, Esqs.

-and-

JULES TEITELBAUM, Esq.

NORMAN KLASSFELD, Esq., of counsel
Attorneys for Trustee

LOUIS LEFKOWITZ, Esq.

Attorney General of the State of New York

By: ROBERT S. HAMMER, Esq.

Assistant Attorney General, of counsel

Memorandum and Order of Costa, B.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----X

In the Matter	:	74 B 617
of	:	Decision and Order on
ADELPHI HOSPITAL CORPORATION,	:	Trustee's Application for
	:	an Order directing the
Bankrupt	:	New York State Department
	:	of Health to remove and
	:	store all of Bankrupt's
	:	medical records, etc.

-----X

The Bankrupt, Adelphi Hospital Corporation (ADELPHI), was the owner and operator of a not-for-profit public hospital at 50 Greene Avenue, Brooklyn, N.Y. On May 13, 1974, ADELPHI filed a petition under Chapter XI of the Bankruptcy Act. Immediately upon the filing of its Chapter XI petition ADELPHI ceased operations and under court order and supervision maintained a one-person office staff and a skeleton building maintenance and security force to maintain a status quo and preserve the buildings, equipment and supplies pending the efforts of certain interested persons, doctors and groups to reopen the hospital upon the confirmation of a Chapter XI plan of arrangement. Approximately six months elapsed during

which many persons and groups evidenced genuine interest in the rehabilitation of the operation and the reopening of a hospital. Plans of arrangement by Drug Treatment and Alcoholic Treatment groups were considered but because of local opposition from officials representing the area and from planning board and community organizations, that source had to be abandoned. Suffice it to note for the purposes of this application that for the failure to obtain financing and the apparent inability to obtain a State license to operate a hospital at the premises, the Chapter XI proceeding aborted and on November 20, 1974 Adelphi was adjudicated a bankrupt and the Tentative Trustee qualified and is in the process of administering and liquidating the estate.

The Chapter XI petition was signed by Sidney Jaffe as Chairman of the Board of Trustees of ADELPHI. At the outset of the Chapter XI phase of the proceedings, in order to make applications for loans and to inquire into the possibility of removing the violations on the building with a view to compliance with State Department of Health requirements, the old Board of Trustees resigned and new Trustees were appointed by the Court. (See Order of May

28, 1974.) This Board of Trustees at no time operated the hospital.

In due course, the real estate, hospital equipment, and drugs and supplies were sold at public auction to a group headed by Dr. Julius Duncan and Dr. Josephine English, who enjoy an excellent reputation both professionally and in the community because of the social services which they had been rendering.

The premises are now being used by Drs. Duncan and English in association with other public spirited and community interest motivated groups as the Adelphi Community Services, primarily, as the Court understands it and as reported in the many favorable press items, as an outpatient medical treatment center. These services are being rendered in a community which is in dire need of such services, since it is in the heart of a low-income area in which not only has Adelphi Hospital ceased operations but likewise have Swedish Hospital and Brooklyn Eye and Ear Hospital, two institutions of long standing in that community.

Adelphi has been established for many years in the community it served. Understandably, amongst the property

of the Bankrupt Estate, by court order segregated and not sold to the purchasers, there are voluminous records of the multitude of patients who were treated surgically or medically at the hospital (over twenty 4-drawer file cabinets). At the time of the sale and at the closing of title, at the Court's request Drs. Duncan and English agreed to put these records aside in one of the hospital's rooms for a reasonable time, they to be paid a reasonable storage fee fixed by the court until the Trustee could arrange to have the files delivered to the proper authorities.

Soon thereafter, believing that the City of New York, Department of Health or other similar agency was the safekeeping authority for the hospital's medical records, the Trustee started negotiations with the City and eventually made application to the Court to direct the City of New York to take possession of the same. On the return day of that application the City of New York appeared by the Corporation Counsel and advised the Court that the New York State Department of Health is the agency having jurisdiction; whereupon that application was withdrawn and the instant one initiated.

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				METHOD OF DISPOSITION ☒ WRITTEN OPINION (BY JUDGE) ☐ WRITTEN OPINION (PER CURIAM) ☐ DECISION FROM THE BENCH ☐ SUMMARY ORDER ☐ COURT ORDER W/O OPINION ☐ DEFAULT DISMISSAL (CAMP, CAEP, OTHER) ☐ CONSENT DISMISSAL (RULE 33, CRIMINAL, OTHER) ☐ O.18(7) DISMISSAL ☐ OTHER (SPECIFY) _____																																																																																																																																					
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It has been called to the attention of this Court that since the filing of the Chapter XI petition many court subpoenas for production of the medical records were served at the hospital, with which the Trustee complied so long as he maintained office personnel. Further, since the takeover by the new owners, Drs. Duncan and English have been "bothered" with subpoenas and other authorized requests for hospital records of former patients. They have, through their attorneys, indicated their desire to be relieved of these pressures and to have the records removed from their premises.

Because of the obvious importance of the continued availability of these records for the statutory prescribed time and of the public interest and welfare inherent in this application, the Court will hold in abeyance its order permitting the Trustee to abandon the records, awaiting for a reasonable time, no longer than two weeks, the decision of this Court that under the circumstances in this case the Department of Health of the State of New York is the proper agency to take possession of and to store and make available to persons entitled thereto, the hospital treatment records of former patients of

Adelphi Hospital, for the reasons hereinafter ascribed.

At the outset, this Court feels constrained to criticize with regret the "Pontius Pilate" attitude taken by the Attorney General's office of the State of New York in its appearance in behalf of the Department of Health. From the very beginning, the Assistant Attorney General insisted that the obligation under the statute (720.20 of Chap.V, State Hospital Code) to maintain, store and service hospital records upon the hospital's discontinuance of operation devolved upon the "governing body." When told that there has been and was no governing body in existence at this juncture, he indicated that in a proprietary hospital it would be the person who operated the hospital for profit. When informed that Mrs. Marcus, who had operated the hospital, was now mentally and physically incapacitated and confined to an institution, he then stated that under those circumstances "the guidance would have to come not from the Attorney General but from the Health Department," (SM-11/10/75, p.11-13) and when reminded that he represented the Health Department, he requested time to look into the matter, since "Quite frankly, this is the first time I've heard of [it],"

(Mrs. Marcus's incapacity to comply with statute) (S.M. 11/10/75, p.16). The application was marked submitted, all parties to submit memoranda, and he was to advise the Court of a possible disposition by December 1, 1975 (S.M. 11/10/75, p.15-16).

Despite many phone calls from the Court's office staff to the Assistant Attorney General, there has been no advice as to a solution, and the Trustee was advised that the Attorney General would not submit a memorandum.

While this application and the issue involved may be an issue of first impression, it is not isolated in its importance to the problem which needs a solution and which will confront trustees in at least five hospital cases now pending in the Bankruptcy Courts of the Eastern and Southern Districts of New York as well as those hospitals in the area which have just closed down without a resort to court rehabilitation.

The Attorney General's office has sought cooperation from this Court by its request for cooperation in consumer services businesses which file bankruptcy proceedings, unto which this Court has given unstinting cooperation by providing for notice to his office in those

cases. It is the thought of this Court that under the statute applicable the office of the Attorney General, being one of the primary authorities charged with compliance and enforcement, has a duty to guard the public. The cliché "The power to tax is the power to destroy," has an historical background for its justification. There should not develop, nor can this Court encourage the birth of its counterpart that "The power to tax gives the right to ignore." An already-overtaxed, essential-service-deprived citizenry should not be further incensed by a deprivation of access to medical records at times perhaps essential to individual health, welfare and life.

The effect of a disclaimer and abandonment of valueless property, if ordered by the Court, is to revest title in the bankrupt, who would then hold the property in the same manner as if it had never been in the trustee. Brown v. O'Keefe, 300 U.S. 598 (1937). The statutory obligation would then seem to devolve upon the bankrupt, who would have to care for and maintain the property (the hospital's medical records) in the manner prescribed by the applicable statute, which in its pertinent section provides:

"Chapter V - State Hospital Code.

720.20 Medical record department. (a) a hospital shall maintain a medical record department with adequate equipment to enable physicians to properly complete medical records....(q) In the event that a hospital discontinues for any reason whatsoever, the governing authority shall maintain, store and service in the city in which the hospital is located all medical records for a period of not less than six years. The governing authority shall notify the department in writing where the medical records will be stored and services."*

The New York Public Health Law, Sec. 206-a(11)a, defines "governing body" as:

"Governing body" means the group of the individuals ultimately responsible for a hospital's general policies and shall include, but not limited to, a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a director or any other official of a hospital with comparable responsibilities."

A trustee in bankruptcy is nothing more than a fiduciary of the Bankruptcy Court charged with examination of the acts and conduct of the bankrupt, and the liquidation and distribution of assets in such a way as to realize the greatest pecuniary to creditors.

*Subsection (1) of that regulation requires maintenance of the records for at least six years after an infant attains majority.

Neither under the state code nor under Bankruptcy Act definition can the trustee be designated as the "governing body" of a hospital. Further, the storage and servicing of these records as statutorily prescribed is contrary to the Bankruptcy Act and the Bankruptcy Court mandate to administer and close a bankrupt estate with due diligence and expeditiously at the least expense to creditors, and a trustee is not provided with financing or personnel for the "servicing" of the records.

The avowed purpose and obvious public health and welfare benefit behind the statute is a continued maintenance and servicing of the records in an effort to make the same available to the patient and his physician and surgeon in future diagnosis and treatment and to be available for court subpoena whenever necessary.

The power and jurisdiction of the Bankruptcy Court are set forth in Section 2 of the Bankruptcy Act, 11 U.S.C. XI. The power is such that once the property of a bankrupt comes into custody of the court, no other court has jurisdiction to take over and administer such property without the consent of that court. Stanolind Oil & Gas Co. v. Logan, 92 F.2d 28 (CCA 5, 1937).

Nowhere can it be found in statutes or court decisions that the Bankruptcy Court has the power to compel a person or agency charged with a state statutory obligation who is not a court appointed officer such as a Receiver, a Trustee, or a person or corporation over which it has statutory jurisdiction such as a Bankrupt or a Debtor, to perform a duty or obligation imposed by a state or, for that matter, a federal law. The Attorney General at no juncture of this application has contested the jurisdiction of this court. However, the Court, being cognizant of the nature of the order sought by the Trustee, i.e., "directing the New York State Department of Health to remove and store" the medical records, is hesitant to make such a direction and to initiate a confrontation in the event of a disregard or continued ignoring of the order by the State Department of Health. As previously indicated, this Court is concerned over the chaos, confusion and disregard of the public welfare which would result from the granting of an order permitting an abandonment of the records.

The position taken by the Trustee is one imposed upon him by the nature of his office. The Trustee has from

the outset a managerial duty to concentrate his efforts on property of possible benefit to the estate, and to eliminate property that will be either valueless or unprofitable in its administration. Collier on Bankruptcy, 14th Ed., Vol. 4A, ¶70.42, p.502.

In the instant case the medical records are not included amongst the property and documents which passed to the Trustee under Section 70a(1) of the Bankruptcy Act, and consequently they were not the subject of the auction sale of the bankrupt's assets. The documents that pass under the section are those that deal with the business of the bankrupt, elucidate business conditions and practices both past and prospective, and that add to or enhance the value of the physical assets marshaled and sold and also aid a Trustee in properly and effectively administering the estate. For the purposes of this application this Court makes the finding of fact and of law that title to the medical records of Adelphi Hospital, the Bankrupt, did not pass to the Trustee. Matter of Bradey, 204 F.2d 137.

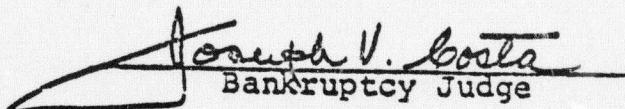
A finding of fact and law is also made that there is no "governing body" within the definition of §206a(1)

of the New York Public Health Law over whom this court has jurisdiction and if such a "governing body" does exist and can be compelled to undertake and discharge the obligations set forth in §720.20(q) of the New York State Health Code, the enforcement of compliance is a matter for the Department of Health of the State of New York, if necessary in a State Court proceeding undertaken by the Attorney General.

Under the circumstances in this case the application of the Trustee will be granted to the extent that an order will be entered suggesting that the Department of Health of the State of New York take possession of the medical records of Adelphi Hospital, now bankrupt and not operating. That should the said Health Department of the State of New York fail to take possession of said medical records within fifteen (15) days after service of a copy of said order upon the Attorney General, who has appeared herein in behalf of said respondent, then this Court will entertain an ex-parte application by the Trustee for the abandonment of said records.

The Trustee shall submit an order in accordance with the provisions of this decision.

Dated: Brooklyn, New York
March 22, 1976


Bankruptcy Judge

Order Authorizing Abandonment of Records
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

In the Matter

-of-

ADELPHI HOSPITAL CORPORATION,

Bankrupt.

- - - - - x

Upon reading and filing the petition of Lawrence Sarf, the trustee herein, dated October 6, 1975, and the order to show cause of this court dated October 7, 1975 for an order directing the New York State Department of Health to remove and store all of the bankrupt's medical and patient records now located at its former premises, and declaring that Section 720.20(q) of Chapter V of the State Hospital Code of the State of New York is of no force and effect as against the trustee herein or, in the alternative, authorizing the trustee to abandon said medical and patient records as burdensome to this estate; and upon the affidavit of service of the above papers of Michael Brofman, sworn to October 9, 1975; and said hearing having been held before this court on November 10, 1975, and after hearing Schneider & Arzt & Jules Teitelbaum, Esqs. for the trustee in support of the application; and Louis J. Lefkowitz, the Attorney General of the State of New York, attorney for the New York State Department of Health in opposition thereto; and upon the record made before me and the decision of this court dated March 22, 1976, and it being the suggestion of this court that the New York State Department of Health take possession of the patient and medical records of the bankrupt; it is

ORDERED that the trustee's motion be and the same is

48.2a

Order Authorizing Abandonment of Records

hereby granted to the extent that in the event the New York State Department of Health shall fail to take possession of the patient and medical records of the bankrupt hospital within 15 days after service of a copy of this order, this court shall entertain an ex parte application by the trustee to abandon the medical and patient records of the bankrupt.

Dated: Brooklyn, New York
March 31, 1976

Bankruptcy Judge

Order Authorizing Abandonment of Records

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

In the Matter

No. 74 B 617

-of-

ADELPHI HOSPITAL CORPORATION,

Bankrupt.

ORDER AUTHORIZING
TRUSTEE TO ABANDON
THE MEDICAL AND
PATIENT RECORDS OF
THE BANKRUPT ESTATE

----- x

Upon the annexed petition of Lawrence Sarf, the trustee herein, by his attorneys Schneider & Arzt and Jules Teitelbaum, dated May 13, 1976, and upon all the proceedings heretofore had herein, and pursuant to the order of this court dated March 31, 1976, and the New York State Department of Health having failed to take possession of the patient and medical records of the bankrupt hospital within 15 days after service of a copy of said order, and good cause having been shown, and no adverse interest being represented, it is

ORDERED that Lawrence Sarf, as trustee herein, be and he is hereby authorized and empowered to abandon all medical and patient records of the bankrupt and incur all reasonable and necessary expenses in connection therewith, *and that a copy of this order be served upon the Attorney General of the State of New York within 10 days of the date hereof.*

Dated: Brooklyn, New York
May 14, 1976

JOSEPH V. COSTA

Bankruptcy Judge

49a
Notice of Appeal to District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
In the Matter of :
ADELPHI HOSPITAL CORPORATION, : 74 B 617
Bankrupt. : NOTICE OF APPEAL
-----X

S I R S :

NOTICE IS HEREBY GIVEN, that the New York State Department of Health appeals to the United States District Court, Eastern District of New York, from the order of Hon. Joseph V. Costa, Bankruptcy Judge, from the order entered herein May 14, 1976.

This appeal is taken pursuant to Rule 801, et seq. of the Bankruptcy Rules.

Dated: New York, New York
May 24, 1976

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for New York State
Department of Health
Office & P.O. Address
2 World Trade Center
New York, New York 10047

TO: FINKEL NADLER & GOLDSTEIN
Counsel for Trustee
in Bankruptcy
401 Broadway
New York, New York 10013

50a
Designation of Record and Issues on Appeal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
In the Matter of
ADELPHI HOSPITAL CORPORATION,
Bankrupt.

74 B 617
Judge Costa

-----X
DESIGNATION OF RECORD
AND ISSUES ON APPEAL

Pursuant to Rule 806 of the Bankruptcy Rules,
appellant New York State Department of Health designates
the record on appeal and the issues intended to be
presented as follows:

The record shall consist of:

1. Notice of Appeal
2. Order appealed from entered May 14, 1976
3. Decision of the Court dated March 22, 1976
4. Order to show cause dated October 7, 1975
and petition annexed.

Designation of Record and Issues on Appeal

5. Stenographic transcript of all proceedings on trustee's application to abandon bankrupt's patients' records.
6. All filed correspondence between the Court and any other party relating to this application.

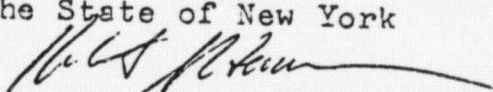
The issues intended to be presented are:

1. Whether the order appealed from is within the jurisdiction of the Court and is otherwise, illegal, arbitrary or capricious?

Dated: New York, N. Y.
June 3, 1976

Yours, etc.

TO: HAROLD S. BERZOW, ESQ.
FINKEL, WADLER &
GOLDSTEIN
Counsel for Trustee
1201 Broadway
New York, N. Y. 10013

LOUIS J. LEFKOWITZ
Attorney General of
the State of New York
By 
ROBERT S. HAMER
Assistant Attorney General
Attorney for Appellant
Two World Trade Center
New York, N. Y. 10047
Tel. No. 488-3394

Memorandum and Order of Pratt, D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

In the Matter of

ADELPHI HOSPITAL CORPORATION,

DOCKET NO. 77 C 243

In Bankruptcy 74 B 617

Bankrupt. MEMORANDUM AND ORDER

----- x

PRATT, J:

The New York State Department of Health appeals from the May 14, 1976 order of Bankruptcy Judge Joseph V. Costa who authorized the trustee in bankruptcy to abandon the patient records of the bankrupt Adelphi Hospital Corporation. Adelphi, the owner and operator of a not-for-profit public hospital in Brooklyn, filed a Chapter XI petition on May 13, 1974 and forthwith ceased its many years of service to the community. Its Board of Trustees resigned, and a new board was appointed by the bankruptcy judge for purposes of developing a reorganization plan under Chapter XI. The rehabilitation attempt failed, and ultimately the real estate and the hospital's equipment, drugs, and supplies were sold at public auction.

Segregated from the property of the bankrupt estate and not sold to the auction purchasers were the voluminous records of the multitude of patients who had been treated at the hospital, filling more than 20 four-drawer file cabinets. Presently they are being held at the building

Memorandum and Order of Pratt, D.J.

which formerly housed the hospital. The fate of those records is the subject of this appeal.

The trustee sought from the bankruptcy judge authority to abandon the records as well as a declaration that he was not bound or affected by the provisions of the State Hospital Code, Title 10 NY Codes, Rules and Regulations, Section 720.20, which requires the governing authority of a discontinued hospital to maintain and preserve its records for at least six years. The Department of Health opposed the application to abandon the records claiming that the state has a legitimate and persuasive justification under the police power to require preservation of hospital records which document a patient's treatment, medication, diagnoses, and medical history. Such records are frequently useful if not necessary for future treatment of the patient, as well as in presenting and disposing of claims before various administrative and judicial bodies.

No one would seriously question the importance of the records or the legitimacy of the state's interest in seeing that they are preserved. The questions presented by this appeal, however, are whether the trustee of a bankrupt hospital corporation has any obligation to preserve and maintain the records, and if so, may he abandon those records with the approval of the bankruptcy judge.

Memorandum and Order of Pratt, D.J.

Bankruptcy Judge Costa held hearings on the trustee's application to abandon on October 1, October 22, and November 10, 1975. There being no dispute over the facts, testimony was not required. After thorough analysis of the issues, Bankruptcy Judge Costa rendered his decision in a 13 page memorandum dated March 22, 1976. He carefully reviewed the history of the problem and analyzed the competing policy considerations which essentially place the state's concern in preserving the records against federal bankruptcy policies which seek a prompt liquidation of the bankrupt's estate, payment of administration expenses and distribution of the net proceeds among the bankrupt's creditors.

It is beyond dispute that under the supremacy clause of the U.S. Constitution the requirements and policies of the bankruptcy law must prevail, notwithstanding a state law or policy which might thereby be rendered ineffective.

Judge Costa pointed out that:

The position taken by the trustee is one imposed on him by the nature of his office. The trustee has from the outset a managerial duty to concentrate his efforts on property of possible benefit to the estate, and to eliminate property that will be either valueless or unprofitable in its administration. Collier on Bankruptcy, 14 ed., vol. 4A (70.42, p. 502).

Decision 11-12.

Judge Costa also noted that neither statute nor court decision empowered the bankruptcy court to compel the

Memorandum and Order of Pratt, D.J.

trustee to perform an affirmative duty or obligation imposed by either state or federal law. Id. at 11.

Judge Costa determined that the trustee was not the "governing body" of the bankrupt Adelphi Hospital. Id. 10. He also found that the medical records of the hospital were "not included amongst the property and documents which passed to the trustee under §70a(1) of the Bankruptcy Act" and that "title to the medical records of Adelphi Hospital, the bankrupt, did not pass to the trustee. Matter of Bradey, 204 F2d 137." Id. 12. He also made a finding that "there is no 'governing body' within the definition of §206a(1) of the New York Public Health Law over whom this court has jurisdiction", id. 12-13, and noted that if such a "governing body" exists and could be compelled to meet the requirement of §720.20(q) of the New York State Health Code, then "enforcement of compliance is a matter for the Department of Health of the State of New York, if necessary in a state court proceeding undertaken by the Attorney General." Id. 13.

Despite the state's complaints that the bankruptcy judge reflected an "institutional annoyance" with this matter and showed "an insensitivity to the Health Department" it is apparent from the record and from the carefully written decision of the bankruptcy judge that he gave the matter serious consideration with an obvious awareness of the public importance of the problem and the implications of the decision

Memorandum and Order of Pratt, D.J.

which he felt compelled to make. Judge Costa gave the Health Department every opportunity to find an alternate solution since the inevitable result of this proceeding is that the bankrupt estate must be relieved from the burden which the State Health Department seeks to impose on it.

To the bankrupt estate, the records are not an asset; they are a burden. While they might be viewed as "property" in the sense of the scrap value of the paper and the second hand value of the filing cabinets, neither party has argued those insignificant considerations. The overriding concern of all parties and the court is with the information content of those records, and that information is not "property" which was acquired by the trustee. Clearly, it has no commercial value, and the bankruptcy judge properly excluded the records from the public auction.

Now the question remains as to whether in the liquidation of this estate some arrangements must be made for preservation of these records for the required six year period, which in the case of infants, runs to six years beyond their majority. Over such an extensive time the mere storage of these records would impose a substantial economic burden. Added to the storage problem is the need for access to the records for medical purposes and the honoring of subpoenas as well as the related filing operations required to keep them in usable form and order. Nothing in the bankruptcy

Memorandum and Order of Pratt, D.J.

act nor or in any decisions which have been brought to the court's attention would authorize the imposition of those burdens upon the bankrupt estate.

The state argues that the Health Department's regulation requiring preservation of hospital records by the governing authority for at least six years should be viewed as a deferred franchise tax and, therefore, enforceable against the estate as a tax. Whether the state could have imposed such a deferred obligation upon a hospital corporation, whether by way of tax, lien, escrow deposit, or other means, need not be considered here. It is sufficient to note that the state has not yet chosen to do so. Merely enacting by regulation a requirement for future action by the "governing authority" of a hospital corporation does not create the kind of claim against that corporation which may be enforceable in a bankruptcy proceeding.

While the state strongly urges the public's interest in preserving the hospital records, it has done nothing either prior to this bankruptcy nor, indeed, since the institution of this abandonment proceeding some two years ago to implement its policy. Apparently there is no agency nor even funds available to protect this important public interest. Nevertheless, having recognized and declared the importance of preserving records of discontinued hospitals, the state must, in addition, provide some means for implementing its policy in a manner

Memorandum and Order of Pratt, D.J.

which does not conflict with the clear requirements and policies of the federal Bankruptcy Act. In short, the state cannot by means of the regulation in question impose upon a bankrupt hospital's estate, and its trustees in particular, the burden of future maintenance and preservation of its medical records.

The regulation imposes the burden of preserving hospital records upon "the governing authority". 10 NYCRR §720.20. The state argues that the regulation's "governing authority" is the same as the "governing body" which is defined in §206-a(11)(a) of the New York Public Health Law as

the group of the individuals ultimately responsible for a hospital's general policies and shall include but not limited to, a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a director or any other official of a hospital with comparable responsibilities.

Accepting that definition, Judge Costa correctly found that there was no such governing body over whom he had jurisdiction. The statutory definition clearly contemplates the individuals responsible for the hospital's general policies. Realistically, this can mean only individuals who were responsible for the policies while the hospital was in operation. When it ceased operation and entered bankruptcy, the individuals who had been Adelphi's trustees

Memorandum and Order of Pratt, D.J.

resigned, and new trustees took over, not for purposes of operating a hospital, but for purposes of devising some new kind of operation. Whether any of those individuals who served as trustees of Adelphi either prior to or after the filing of the Chapter XI petition, might be chargeable with the obligation of preserving the hospital records is a question, as Judge Costa found, for determination by some other tribunal, perhaps in an appropriate state court proceeding brought to enforce the Health Department's regulation. It is not a question for the Bankruptcy Court.

Judge Costa suggested that the Health Department itself take possession of Adelphi's medical records. The state says it has no facilities or funds for such purpose. If that be so, the state will then have to consider whether it will take appropriate enforcement action to implement the policy for record preservation embodied in 10 NYCRR §720.20. Having determined its public policy the state must now find the means to enforce that policy; it may not do so through this bankruptcy proceeding.

The order of the bankruptcy court entered May 14, 1976 is affirmed.

SO ORDERED.

Dated: Westbury, New York
October 19, 1977.



GEORGE C. PRATT
U. S. DISTRICT JUDGE

Notice of Appeal to Court of Appeals

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of ADELPHI HOSPITAL
CORP.,

Bankrupt.

: NOTICE OF APPEAL

: 77 Civ. 243
(In Bankruptcy
74 B 617)

S I R S :

PLEASE TAKE NOTICE that the New York State Department of Health hereby appeals to the United States Court of Appeals for the Second Circuit from an order of the District Court (Pratt, D.J.) dated October 19, 1977 authorizing the trustee in bankruptcy to abandon hospital records and this appeal is taken from each and every part of this order.

Dated: New York, New York
November 18, 1977

Yours, etc.,

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of Health
By

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TO: CLERK
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Eastern District of New York

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